

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

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In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
A National Broadband Plan for Our Future	)	GN Docket No. 09-51
	)	
Establishing Just and Reasonable Rates for Local Exchange Carriers	)	WC Docket No. 07-135
	)	
High-Cost Universal Service Support	)	WC Docket No. 05-337
	)	
Developing an Unified Intercarrier Compensation Regime	)	CC Docket No. 01-92
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Lifeline and Link-Up	)	WC Docket No. 03-109
	)	
Universal Service Reform – Mobility Fund	)	WT Docket No. 10-208
_____	)	

**COMMENTS OF METROPCS COMMUNICATIONS, INC.  
ON CERTAIN PETITIONS FOR RECONSIDERATION AND/OR CLARIFICATION**

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**COMMENTS OF METROPCS COMMUNICATIONS, INC.  
ON CERTAIN PETITIONS FOR RECONSIDERATION AND/OR CLARIFICATION**

MetroPCS Communications, Inc. (“MetroPCS”),<sup>1</sup> by its attorneys, hereby respectfully submits these comments in support of the Petitions for Reconsideration and/or Clarification of the *USF/ICC Transformation Order* (“Order”)<sup>2</sup> filed by Sprint Nextel Corporation<sup>3</sup> and United

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<sup>1</sup> For purposes of this Petition, the term “MetroPCS” refers collectively to MetroPCS Communications, Inc. and all of its FCC-licensed subsidiaries.

<sup>2</sup> *In the Matter of Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing an Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up; Universal Service Reform – Mobility Fund,*

States Telecom Association<sup>4</sup> in the above-captioned proceeding.<sup>5</sup> As is set forth in greater detail below, MetroPCS supports the requests for reconsideration in the Sprint and USTelecom Petitions that the Commission adopt a default rate of \$0.0007, rather than the lowest ILEC rate in the state, for all LECs that meet the traffic pumping triggers. MetroPCS also opposes NECA's request that access charges be properly assessed for intraMTA calls delivered via IXC.<sup>6</sup> In support, following is respectfully shown:

## **I. INTRODUCTION AND SUMMARY**

MetroPCS applauds the Commission for taking meaningful steps in the *Order* to combat the rampant traffic pumping that has been plaguing the industry for years. MetroPCS consistently has pointed out that traffic pumping is a growing problem for both local reciprocal compensation and interstate access and that such traffic generates wasteful, unproductive arbitrage and unnecessarily high end user rates for customers. Consequently, MetroPCS is appreciative of the Commission's acknowledgment of the arbitrage problem and the steps that the Commission has taken to address these issues. However, as Sprint Nextel Corporation ("Sprint") and United States Telecom Association ("USTelecom") correctly observe in their

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WC Docket Nos. 10-90, 07-135, 05-337, 03-109, GN Docket No. 09-51, CC Docket Nos. 01-92, 96-45, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161 (rel. Nov. 18, 2011) (the "*Order*").

<sup>3</sup> Sprint Nextel Corporation, Petition for Reconsideration and Clarification, CC Docket No. 01-92 *et al.* (filed Dec. 29, 2011) ("*Sprint Petition*").

<sup>4</sup> United States Telecom Association, Petition for Reconsideration, CC Docket No. 01-92 *et al.* (filed Dec. 29, 2011) ("*USTelecom Petition*").

<sup>5</sup> *Connect America Fund et al.* WC Docket Nos. 10-90, 07-135, 05-337, 03-109, GN Docket No. 09-51, CC Docket Nos. 01-92, 96-45, WT Docket No. 10-208.

<sup>6</sup> National Exchange Carrier Association, Inc; Organization for the Promotion and Advancement of Small Telecommunications Companies; and Western Telecommunications Alliance, Petition for Reconsideration and Clarification, CC Docket No. 01-92 *et al.*, at 36 - 37 (filed Dec. 29, 2011) ("*NECA Petition*").

respective petitions, loopholes still exist despite the reforms, and certain clarifications and/or reconsiderations are necessary to further reduce traffic pumping and related disputes.<sup>7</sup>

Specifically, the Commission requires the traffic pumping triggers to file new access rates coinciding with the lowest interstate access rate of the price cap LEC in the state. However, as explained below, MetroPCS is concerned that this requirement lacks certainty and therefore supports Sprint's request to mandate a default rate of \$0.0007 per minute of use ("MOU") for LECs that meet the traffic pumping triggers in lieu of the current requirement.<sup>8</sup> USTelecom also similarly advocates a rate of \$0.0007 noting that traffic pumpers already have extremely low costs and "a benchmark rate based on the incumbent LEC's rate would therefore continue to encourage access stimulation."<sup>9</sup> An equally important consideration, is that the various state-by-state rates to be applied under the *Order's* remedy will generate numerous disputes and thereby unduly burden both carriers and the Commission. As is demonstrated below, the benefits of certainty outweigh the benefits of a possibly lower (than \$0.0007) access rate for traffic pumping LECs. Thus, MetroPCS urges the Commission to reconsider its imposition of variant state-specific, and sometimes LEC-specific, rate remedies.

MetroPCS also supports several other issues raised in reconsideration petitions by these interested parties, which are designed to prevent further regulatory arbitrage. Specifically, MetroPCS supports those petitions seeking Commission clarification on limits to be placed on price cap rate elements, ways to reduce mileage inflation, and limits to the scope of the interim default rule so that it does not affect the current rules governing points of interconnection. In addition, MetroPCS supports those petitions seeking to incorporate a true-up mechanism in the

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<sup>7</sup> See generally *Sprint Petition*; see *USTelecom Petition*, at 35 – 36.

<sup>8</sup> *Sprint Petition*, at 8.

<sup>9</sup> *USTelecom Petition*, at 36.

rules, reducing the amount of time provided to a traffic pumper to refile a tariff, and capping the intrastate rate for new entrants.

Finally, MetroPCS asks the Commission to decline to reconsider its decision to subject intraMTA traffic to reciprocal compensation, regardless of whether the traffic is connected through an interexchange carrier (IXC). The National Exchange Carrier Association, *et al.*, (“NECA”) petition asks the Commission to reconsider applying access rates to such traffic.<sup>10</sup> MetroPCS submits that such an action would diminish any incentive for a RLEC to directly connect with a CMRS provider, thereby placing the CMRS provider at a severe disadvantage, and unwinding the benefits of the current rules.

## **II. THE RATE REMEDIES IMPOSED BY THE ORDER FAIL TO PROVIDE SUFFICIENT CERTAINTY TO CMRS PROVIDERS; A RATE OF \$0.0007/MOU SHOULD BE ADOPTED**

MetroPCS consistently has urged the Commission to take bold action to eliminate traffic pumping.<sup>11</sup> Traffic pumping schemes are a particularly acute problem for carriers such as MetroPCS, that offer an unlimited paid-in-advance, tax-inclusive flat-rate service plan. Flat-rate carriers cannot pass excessive termination charges onto their customers as easily as usage-based carriers, who meter usage and bill for services in arrears. Indeed, traffic pumpers prey on flat-rate carriers by encouraging their customers with fixed monthly rate plans for unlimited service to call numbers with high termination charges, thereby shifting the burden of the excessive

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<sup>10</sup> National Exchange Carrier Association, Inc.; Organization for the Promotion and Advancement of Small Telecommunications Companies; and Western Telecommunications Alliance, Petition for Reconsideration and Clarification, CC Docket No. 01-92 *et al.* (filed Dec. 29, 2011) (“NECA Petition”).

<sup>11</sup> See *e.g.*, Petition of MetroPCS Communications, Inc. for Clarification and Limited Reconsideration, CC Docket No. 01-92 *et al.*, at 16 -20 (filed Dec. 29, 2011); Reply Comments of MetroPCS Communications, Inc., CC Docket No. 01-92 *et al.*, at 3 -5 (filed Sept. 6, 2011); Comments of MetroPCS Communications, Inc., CC Docket No. 01-92 *et al.* at 12 -17 (filed Aug. 24, 2011).

termination fees to the flat-rate carrier. Such actions increase the overall cost of service for all customers and threaten the future of “all-you-can-eat” service plans.

The Commission’s *Order* acknowledges the pleas of small, rural and mid-tier carriers for government action to discourage such arbitrage by implementing rate remedies for traffic pumping. A price cap LEC meeting the traffic pumping triggers will have to “benchmark its tariffed access rates to the rates of the price cap LEC with the lowest interstate switched access rates in the state.”<sup>12</sup> In addition, rate-of-return LECs must compute their rates using a Section 61.38 analysis.<sup>13</sup> While MetroPCS appreciates these efforts to combat the problem, and believes such measures go a long way towards addressing the problem, MetroPCS still has concerns. Specifically, because there can be numerous price cap LECs in a state and their switched access rates may vary, the Commission’s approach creates uncertainty regarding the precise remedial rate in each state. Adverse consequences will flow from this uncertainty.

Because the remedial rate is based on the lowest interstate switched access rates in each separate state, there will be material discrepancies among and between various states. This raises two primary concerns. First, the specified rate may not be easily and readily ascertained, and it therefore may be unduly burdensome to require a CMRS provider to determine on a state-by-state basis whether or not a LEC which has triggered the traffic pumping test is applying the correct remedial rate. A simple real world example will prove the point. Recently, MetroPCS was a party to a traffic pumping rate dispute before the FCC, and the Commission asked each of the two parties to demonstrate, in response to Commission inquiries, what rate the California Public Utilities Commission (“PUC”) had established as the appropriate TELRIC local

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<sup>12</sup> *Order* at ¶¶ 679, 689.

<sup>13</sup> *Order* at ¶¶ 684 – 685.

termination rate in the state. The parties had vastly different answers to the question. The reason behind this discrepancy was that there were several rates in effect in a given state. Some were calculated on pure minutes of the “MOU” basis. Some contained separate components for call set-up and call duration. And, some reflected special negotiated contract rates that may or may not be available to others depending upon whether the parties are similarly situated.

While MetroPCS appreciates the effort of the Commission to provide MetroPCS the benefit of the lowest interstate switched access rate in the state, the truth is MetroPCS does not know offhand what that rate is for each price cap LEC in a state, and is not confident that it could accurately ascertain the value with a modicum of research. Therefore, a great deal of time and effort will be required from the wireless provider to ensure that the proper rates are computed for each state. This will be burdensome to any provider, but may be especially burdensome to small, rural, and mid-tier providers that might not have the resources necessary to invest in the confirmation of rates. Worst of all, uncertainty in the precise level of the remedial rate will generate otherwise unnecessary disputes that will divert the resources of the originating carriers, terminating carriers and the Commission. Furthermore, the Commission may find itself to be ill-equipped to adjudicate disputes regarding the appropriate rate, which could complicate and protract the litigation. Whether these disputes are resolved federally at the FCC, or locally, at the state public service commission, there also remains a serious risk of delay and inconsistent rulings, which will only generate further confusion and disputes.

Second, MetroPCS questions whether it is appropriate for traffic pumpers to get the benefit of a rate greater than \$0.0007 in states where the lowest interstate switched access rate of any price cap LEC in the state is above that level. There is a sufficient amount of evidence in the record that demonstrates \$0.0007 is a prevailing compensatory rate in most states, to cause concern when the Commission endorses what might be a higher rate in isolated instances. The



Commission may inadvertently be rewarding traffic pumpers in those states with abnormally high interstate switched access rates for price cap LECs. In order to alleviate carriers of this uncertainty, MetroPCS recommends that the Commission reconsider its prior action and apply a uniform rate of \$0.0007 as requested in the petitions of Sprint and USTelecom. In support of this proposal, the Commission should consider the positive impact that the \$0.0007 default rate in the *ISP Remand Order* had in discouraging uneconomic arbitrage schemes.<sup>14</sup> The *ISP Remand Order* was adopted as a result of dial-up ISP schemes that generated large, unnecessary volumes of traffic to an ISP which was demanding an excessive termination rate that did not reflect the truly minimal costs associated with routing such large volumes of terminating calls. In the *ISP Remand Order*, the Commission acknowledged that these traffic imbalances were caused by business decisions “driven by regulatory opportunities that disconnect costs from end-user market decisions.”<sup>15</sup> Therefore, the Commission took action to eliminate the opportunity for such arbitrage by implementing an (interim) recovery scheme that imposed rate caps at \$0.0007/MOU.<sup>16</sup> This rate cap was “relatively straightforward to implement, and avoid[ed] complicated and contentious rate adjustment computations.”<sup>17</sup> The same rationale supports a \$0.0007/MOU default rate for carriers that trigger the traffic pumping definition. Complicated formulas in each state will invite arbitrage and generate disputes between carriers. Since traffic pumping is “driven by regulatory opportunities that disconnect costs from end-user market

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<sup>14</sup> *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Intercarrier Compensation for ISP Bound Traffic*, Order on Remand and Report and Order, 16 FCC Rcd 9151 (Rel. Apr. 27, 2001) (“*ISP Remand Order*”).

<sup>15</sup> *ISP Remand Order* at ¶ 5.

<sup>16</sup> *ISP Remand Order* at ¶78.

<sup>17</sup> Comments of Sprint Nextel Corporation, *In the Matter of Section XV, Reducing Inefficiencies and Waste by Curbing Arbitrage Opportunities, et al.*, WC Docket Nos. 03-109, 10-90, 07-135, 05-337; GN Docket No. 09-51; CC Docket Nos. 01-92, 96-45, at 2 (filed Apr. 1, 2011).

decisions,”<sup>18</sup> the Commission should reconsider its prior ruling and mandate a rate of \$0.0007 for LECs that meet the traffic pumping triggers.

### **III. RECONSIDERATION AND/OR CLARIFICATION IS NEEDED ON SEVERAL ADDITIONAL ISSUES TO SUCCESSFULLY COMBAT ARBITRAGE**

MetroPCS also supports additional reconsiderations and clarifications suggested by Sprint and USTelecom with the goal of combating regulatory arbitrage and closing additional loopholes. First, if the Commission does not adopt a \$0.0007/MOU rate, with respect to traffic pumping LECs, the Commission should specify “which price cap LEC rate elements may be included in th[e] composite rate, or, at a minimum, explicitly direct the CLEC to tariff a rate that reflects only those functions it actually performs,” as petitioned by Sprint.<sup>19</sup> Absent clarification of the existing rule, a carrier involved in traffic pumping may include extraneous rate elements in computing its rate benchmark. For example, the requested clarification would further limit the rates that traffic pumpers could charge by allowing them only to collect for those elements that they actually provide – and not all elements which could be part of the price cap LEC rates, such as access switching.<sup>20</sup>

MetroPCS also supports Sprint’s request for clarification that a CLEC engaged in access stimulation must use the price cap LEC’s average local transport miles or its own actual transport

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<sup>18</sup> *ISP Remand Order* at ¶ 5.

<sup>19</sup> *Sprint Petition*, at 6.

<sup>20</sup> This is similar to the existing rule that allows LECs who may be providing interstate access for the other carriers to only be permitted to collect charges for those rate elements actually provided. See *In the Matter of Access Charge Reform; Reform of Access Charges Imposed by Competitive Local Exchange Carriers; Petition of Z-Tel Communications, Inc. For Temporary Waiver of Commission Rule 61.62(d) to Facilitate Deployment of Competitive Service in Certain Metropolitan Statistical Areas*, Eighth Report and Order and Fifth Order on Reconsideration, 19 FCC Rcd 9108, ¶ 21 (Rel. May 18, 2004).

miles for the call in question, whichever is lower.<sup>21</sup> USTelecom supports closing this loophole, as well, by limiting the ability of an access stimulator to inflate their mileage in order to gain substantial, unwarranted, transport costs.<sup>22</sup> MetroPCS supports such a clarification as it would preclude CLECs from setting the point of interconnection at a distant end office for the sole purpose of collecting significant transport charges based on mileage.<sup>23</sup>

MetroPCS also supports Sprint's recommendation that a true-up mechanism be implemented in situations where a traffic pumping CLEC has traffic volumes that exceed those of the price cap LEC to which it is benchmarked.<sup>24</sup> Such a true-up mechanism, based on 12 months, would likely reduce the amount paid for traffic pumping and further ensure just and reasonable rates. In addition, the Commission should, as Sprint suggests, reconsider and reduce the amount of time that a traffic pumper has to file a new tariff.<sup>25</sup> Reducing the 45-day deadline would reduce the amount of time considered for a true-up, further reducing rates.

MetroPCS also supports USTelecom's request for the Commission to require a carrier entering the market prior to July 1, 2013 at most, "to charge intrastate access rates that mirror interstate rates at the outset."<sup>26</sup> By clarifying this rule, the Commission will be avoiding unnecessary disputes about the appropriate rates to be considered and implemented by new entrants while discouraging new opportunities for arbitrage. Once again, such a rule would be similar to a corresponding rule in the ISP context, which was implemented to avoid such

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<sup>21</sup> *Sprint Petition*, at 7.

<sup>22</sup> *USTelecom Petition*, at 35.

<sup>23</sup> *Sprint Petition*, at 7.

<sup>24</sup> *Sprint Petition*, at 9.

<sup>25</sup> *Sprint Petition*, at 11.

<sup>26</sup> *USTelecom Petition*, at 37.

disputes.<sup>27</sup> Finally, MetroPCS supports USTelecom's request that the Commission clarify that the interim default rule for rural carriers does not affect the current rules governing points of interconnection between CMRS providers and price cap carriers.<sup>28</sup>

#### **IV. ACCESS CHARGES ARE NOT APPROPRIATE FOR INTRAMTA CALLS DELIVERED VIA IXC**

MetroPCS further submits that the Commission should reject NECA's request for reconsideration of the rule that the intraMTA rule applies to all CMRS calls that originate and terminate in the same Major Trading Area ("MTA") regardless of whether the calls are routed at any point through an IXC.<sup>29</sup> The Commission correctly concluded that "intraMTA traffic is subject to reciprocal compensation regardless of whether the two end carriers are directly connected or exchange traffic indirectly via a transit carrier."<sup>30</sup>

Nonetheless, NECA requests that the Commission reconsider this finding and further clarify that "such traffic is subject to access charges notwithstanding potential qualification for reciprocal compensation rates under the intraMTA rule."<sup>31</sup> The requested clarification greatly concerns MetroPCS as it would eliminate any incentive for a terminating RLEC to directly connect to a CMRS provider if they can receive intraMTA traffic routed through an IXC and then be paid by the IXC for terminating the call. Therefore, MetroPCS submits that access charge payments should only be permitted if the RLEC is willing to accept traffic via the ILEC tandem and the CMRS carrier refuses to accept such traffic, as the CMRS carrier should have a choice of ways of interconnect.

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<sup>27</sup> *ISP Remand Order*, at ¶ 81.

<sup>28</sup> *USTelecom Petition*, at 38.

<sup>29</sup> *NECA Petition*, at 36 – 37.

<sup>30</sup> *Order*, at ¶ 379.

<sup>31</sup> *NECA Petition*, at 37.

Under NECA's suggested clarification, a RLEC will be given the opportunity to refuse direct connection by insisting that all of its calls be delivered via an IXC. Unlike the situation where carriers each have an incentive to engineer the most cost effective way to interconnect, this rule only rewards LECs. Therefore, RLECs will not use any direct connect facility knowing that if they deliver the traffic via an IXC, they will receive access charges. As a result, the CMRS carrier will then be unfairly burdened as it will be responsible for paying of all the charges amounted with the facility. Furthermore, if the RLEC refuses to allow the connection via the ILEC tandem, the CMRS carrier will be left with the difficult choice of either paying the entire amount of the facility or rating the calls as long distance – both instances that would increase costs to customers. Notably, the NECA petition fails to provide sufficient justification for the Commission to reconsider its well-reasoned decision to treat all intraMTA calls in the same fashion.

## **V. CONCLUSION**

MetroPCS respectfully requests that the Commission reconsider the above-mentioned aspects of Sprint's and USTelecom's Petitions for Reconsideration and/or Clarification. MetroPCS urges the Commission to adopt a forward-looking approach and impose a uniform rate of \$0.0007 for LECs that meet the traffic pumping triggers. Such a rule would not only provide certainty to providers nationwide, but it will also diminish opportunities for arbitrage and cut back on disputes within the telecommunications community. MetroPCS also submits that the Commission should clarify or reconsider certain other aspects of the *Order* petitioned by the parties in order to extinguish opportunities for further regulatory arbitrage. Specifically, MetroPCS supports Commission clarification on limits to price cap rate elements, limits to mileage inflation, and the scope of the interim default rule so that it does not affect the current rules governing points of interconnection. Furthermore, MetroPCS supports Commission

reconsideration of incorporating a true-up mechanism, reducing the amount of time to refile a tariff as provided to a traffic pumper, and providing a limit to the intrastate rate for new entrants.

Finally, MetroPCS urges the Commission to decline to reconsider its decision to subject all intraMTA traffic, regardless of whether the two end carriers are directly connected or exchange traffic through an IXC, to reciprocal compensation. NECA's suggested application of access rates to traffic exchanged through an IXC would only harm CMRS providers.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I, Jessica DeSimone, do hereby certify that on this 9<sup>h</sup> day of February, 2012, I caused a copy of the foregoing **COMMENTS OF METROPCS COMMUNICATIONS, INC. ON CERTAIN PETITIONS FOR RECONSIDERATION AND/OR CLARIFICATION** to be served on the following via First-Class Mail, postage pre-paid:

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